

October 5, 2005

Walter Bakke
[Address Redacted]
Sacramento, CA 95831

Re: Your Request for Informal Assistance
Our File No. I-05-197

Dear Mr. Bakke:

This letter is in response to your request for advice regarding the post-governmental employment restrictions of the Political Reform Act (the “Act”).¹ As your request seeks general assistance and does not provide specific information about particular proceedings or appearances, we are treating your request as one for informal assistance.² This letter is solely based on the facts presented to us in your request. The Commission does not act as a finder of fact when issuing advice or informal assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Our advice is applicable only to the extent that the facts provided to us are correct, and all of the material facts have been provided.

QUESTION

May you contract with a firm to be a consultant to assist in the development of a “spot” bill that would address, in part, the transfer of Federal equity from one property to another?

CONCLUSION

The Act does not prohibit you taking any private employment to perform duties related to legislative actions provided you do not appear before your former agency or agencies, as discussed below.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Regulation 18329, subd. (c), copy enclosed.)

FACTS

Prior State Employment: You were the Section Chief, Southern Facilities Planning Section (staff services manager II (supervisor)). In that role, you provided a variety of facility management oversight for all Southern California Employment Development Department (EDD) facilities. You worked closely with Program Deputy Directors regarding all aspects of facility management.

Your primary responsibilities included acting as EDD's Southern California's Chief Partnership Resource Negotiator for lease terms and conditions with regard to collecting EDD staff in local agencies. In addition, you acted as EDD's liaison with the Department of General Services, Office of Real Estate Design Services for premise designs/alterations and to ensure timely resolution of leased premise issues. You provided staff oversight on building repairs/maintenance including electrical, modular furniture installations, office moves and reconfigurations. You retired from state service on July 31, 2005.

Offer of Future Employment: You have been contacted by a firm that is interested in hiring you as a consultant to assist in the development of a "spot" bill that would address, in part, the transfer of Federal equity from one property to another.

ANALYSIS

Public officials who leave state service are subject to two types of post-governmental restrictions under the Act,³ colloquially known as the "revolving door" prohibitions.⁴ We discuss your questions under each of these provisions.

- **Permanent Ban:** The first restriction is the "permanent ban" prohibiting a former state employee from "switching sides" and participating, for compensation, in any specific proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state (see sections 87401-87402, regulation 18741.1).

The permanent ban is a lifetime ban and applies to any *judicial, quasi-judicial, or other proceeding in which you participated* while you served as a state administrative official. "'Judicial, quasi-judicial or other proceeding' means any proceeding,

³ In addition, section 87407 prohibits certain state and local officials from making, participating in making, or using their official position to influence decisions affecting persons with whom they are negotiating employment, or has any arrangement concerning employment. (Section 87407; regulation 18747.) However, since you have already left your state position, we need not advise regarding this provision.

⁴ A comprehensive discussion of the elements of the two laws is set forth in the attached "Leaving Your State Job? Post-Employment Restrictions May Affect You." We have attached this document for your information. We do not repeat this information in the body of this letter.

application, request for a ruling or other determination, *contract*, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency . . .” (Section 87400(c), emphasis added.)

To apply the permanent ban to your situation, you would need to identify the proceedings in which you participated while employed by the state.⁵ Your primary responsibilities included acting as EDD’s Southern California’s Chief Partnership Resource Negotiator for lease terms and conditions with regard to collecting EDD staff in local agencies. These agreements would be considered judicial, quasi-judicial, or other proceedings in which you participated. You have not described any private employment that would affect any of the proceedings in which you participated. Therefore, we cannot further advise you regarding the provisions of the permanent ban.

As to your specific question, the permanent ban of sections 87401 and 87402 do not apply to developing legislative proposals because these would not be “judicial or quasi-judicial” proceedings. (*Byrne* Advice Letter, No. A-95-337.) The private employment you describe is assisting in the development of a “spot” bill that would address, in part, the transfer of Federal equity from one property to another. This activity would not be considered a judicial or quasi-judicial” proceeding.

- **One-Year Ban:** The second restriction is the “one-year ban” prohibiting a state employee from communicating, for compensation, with his or her former agency for the purpose of influencing certain administrative or legislative action or influencing certain proceedings. (See section 87406, regulation 18746.1.)

You retired from state service on July 31, 2005. The one-year ban will expire 12 months from your date of separation from employment with EDD. While in effect, the one-year ban would prohibit any formal or informal appearance or oral or written communication with your former agency for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding.

Under regulation 18746.1, your former agency includes any agency you worked for or *represented*. You have provided no information regarding your liaison work. It does not appear, however, that you worked for or represented DGS. If you did, the one-year ban would apply to both EDD and DGS.

An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding in writing or by electronic transmission, attending

⁵ “‘Participated’ means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties.” (See also Reg. 18741.1.)

a meeting, and delivering or sending any communication. In contrast to the permanent ban, which only applies to judicial or quasi-judicial” proceedings, the one-year ban applies to “any appearance or communication made for the purpose of influencing administrative or legislative action,⁶ or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.” Thus, if you are called upon to appear or communicate with your former agency or agencies, the prohibition in section 87406 will apply.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:rd
I:\AdviceLtrs\05-197

Enclosure:

“Leaving Your State Job? Post-Employment Restrictions May Affect You.”

⁶ Section 82037 defines “legislative action” as “the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity. ‘Legislative action’ also means the action of the Governor in approving or vetoing any bill.”